

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**KYLE THOMPSON (Personal
Representative of the Estate of Michael
Eugene McGinness),**

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:16-cv-0654-YY

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on April 5, 2017. ECF 27. Judge You recommended that Defendant's motion to dismiss, and portion of its motion to dismiss that Judge You converted to a motion for summary judgment, be denied. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge You’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge You’s Findings and Recommendation, ECF 27. Defendant’s Motion to Dismiss, a portion of which is converted to a Motion for Summary Judgment (ECF 8), is DENIED.

IT IS SO ORDERED.

DATED this 24th day of April, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge